

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* COIL, Minors.

UNPUBLISHED

April 17, 2018

No. 340746

Wayne Circuit Court

Family Division

LC No. 10-496771-NA

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Before: SAWYER, P.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Respondent-father appeals as of right the circuit court's order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g). We affirm.

The circuit court's involvement with the children began in November 2012 when LC, then 11 months old, was removed from respondent and the mother's care and placed under the court's temporary jurisdiction. SC, who was born in August 2014, while LC was a temporary court ward, was placed into care at birth. The issues preventing reunification of the family during this time included domestic violence, parenting, substance abuse (particularly the mother) and unsuitable housing. After a lengthy period of noncompliance with his treatment plan intended to address his issues, respondent eventually engaged in and successfully completed services and was able to attain stability and, in March 2015, over two years after LC was removed from his care and a little over six months after SC was placed into care at birth, the children were returned to respondent's care. In May 2015, following successful family reunification services, the court terminated its jurisdiction over the children. Unfortunately, by March 2017, respondent was abusing drugs and lacked suitable housing for the children, prompting their removal from his home for a second time in their young lives. The children were placed in foster care again and the court, based on respondent's admissions that his heroin use interfered with his ability to care for the children and that he lacked suitable housing, assumed jurisdiction over them. Petitioner filed a permanent custody petition seeking termination of his parental rights and, after conducting a trial, the court terminated his rights pursuant to MCL 712A.19b(3)(g).<sup>1</sup>

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<sup>1</sup> The court also terminated the parental rights of the children's mother, who was abusing drugs. She is not a party to this appeal.

Respondent first argues that petitioner failed to establish by clear and convincing evidence the statutory ground for termination under MCL 712A.19b(3)(g).

“To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). “We review for clear error a trial court’s finding of whether a statutory ground for termination has been proven by clear and convincing evidence.” *Id.*; *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004); MCR 3.977(K). “ ‘A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.’ ” *Moss*, 301 Mich App at 80, quoting *In re BZ*, 264 Mich App at 296-297.

MCL 712A.19b(3)(g), the statutory ground for termination upon which the circuit court relied, allows for termination where “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” First, respondent does not dispute, and the evidence clearly established, that he failed to provide proper care or custody for his young children. MCL 712A.19b(3)(g). Respondent admitted to serious drug use, which interfered with his ability to properly care for the children, and that he did not have suitable housing for the children. The evidence further established that respondent continued to struggle with drug abuse during the recent proceedings, even after the children’s removal from his care; respondent was incarcerated “on old warrants” on two occasions during the proceedings; and the children had serious dental decay and “a lot of dental needs” upon their removal from his care, supporting the court’s finding that their medical needs were not met. This evidence is clear and convincing that due to his drug use, instability, and lack of suitable housing, he, without regard to intent, failed to provide proper care or custody for his children. MCL 712A.19b(3)(g). *In re Moss*, 301 Mich App at 80.

Respondent, however, asserts that the evidence failed to clearly and convincingly establish the second prong of subsection (g), i.e., that there is no reasonable expectation that he will be able to provide proper care and custody for his children within a reasonable time. MCL 712A.19b(3)(g). To support his argument, respondent highlights the progress he made by the time of the September/October 2017 termination hearing, i.e., he had recently been released from jail in late September 2017, he had not used drugs since August 2017, his most recent drug screen on September 25, 2017 was negative, he was attending “Narcotics Anonymous” and planned to obtain a sponsor and attend counseling, he was required to submit drug screens and participate in substance abuse classes under the terms of his probation, he had obtained full-time employment, and he was residing with his parents and planned to save money to obtain independent housing. Further, he expressed a willingness to address his substance abuse issue and participate in services to reunify with the children again. He asserts that he demonstrated, when the children were previously court wards, an ability to successfully complete services.

While respondent’s recent progress toward addressing his substance abuse and attaining stability is certainly positive, based on the evidence, it remained highly uncertain whether he would be able to maintain his sobriety so that he could provide the children with a stable and safe home within a reasonable time. Respondent’s progress was only very recent—he was only recently released from jail in late September 2017, less than a month before the final day of the

termination trial on October 10, 2017, and he relapsed into drug use as recently as August 2017, significantly, after completing an inpatient rehabilitation program and while the termination proceedings were underway. Further, although he started a second rehabilitation program thereafter, he left early without completing it because he believed “all [he] needed was detox.” Considering respondent’s continued and recent drug use, even after the children were removed from his care and adjudicated as court wards for a second time in their young lives, respondent clearly had not yet demonstrated an ability to maintain his recent sobriety so that he could provide the children with a stable, suitable, and safe home.

We conclude that the trial court did not err in finding that the evidence also clearly and convincingly established that there is no reasonable expectation that respondent would be able to do so within a reasonable time, considering the children’s young ages. MCL 712A.19b(3)(g); *Moss*, 301 Mich App at 80. While respondent asserts that he can benefit from services, given his past success with services when the children were previously court wards, he clearly failed to demonstrate any lasting benefit from those services, as evidenced by his drug use, inability to maintain suitable and stable housing, and instability that led to the children’s removal from his care and custody for a second time in their young lives only a couple of years after regaining custody of them. It is concerning that respondent just avoided termination during the prior proceedings, yet issues that previously plagued the family, including substance abuse, a lack of suitable housing, and instability, recurred during the recent proceedings. The young children are entitled to ongoing and continuous proper care and custody in a stable and safe home, and, although respondent’s current willingness to complete services again is laudable, his failure to demonstrate a long-term benefit from past services indicates that he likely would not be able to provide the children with continuous proper care and custody this time.

The children, especially LC, had already spent a significant part of their young lives in limbo waiting for respondent to rectify his issues so he could reunify with them when they were previously court wards and again during the recent proceedings. As the circuit court found, the children were in a similar predicament again and there is nothing in the record to indicate that respondent’s outcome would be any different this time. The evidence clearly established that respondent was unable to maintain ongoing and continuous proper care and custody for the children, even with past participation and success with services; he had only very recently begun to work towards addressing his substance abuse issue and attaining sobriety and stability, and the children, who were very young, clearly need permanency and stability, especially in light of their significant history of being in care. Accordingly, we are not definitely and firmly convinced that the circuit court made a mistake in concluding that there is no reasonable expectation that respondent will be able to provide proper care and custody for the children within a reasonable time. MCL 712A.19b(3)(g); *Moss*, 301 Mich App at 80. Accordingly, the trial court did not err in terminating respondent’s parental rights under MCL 712A.19b(3)(g).

We also conclude that the circuit court did not clearly err by determining that termination is in the children’s best interests.

“ ‘If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.’ ” *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012), quoting

MCL 712A.19b(5). “[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *In re Moss*, 301 Mich App at 90. The focus of the best-interest determination is on the child, not the parent. *Id.* at 87. “The trial court should weigh all the evidence available to determine the child[]’s best interests.” *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). “In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted).

We review for clear error a trial court’s determination that termination is in a child’s best interests under MCL 712A.19b(5). *In re Olive/Metts Minors*, 297 Mich App at 40-41; MCR 3.977(K). “A trial court’s decision is clearly erroneous ‘[i]f although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.’ ” *In re Olive/Metts Minors*, 297 Mich App at 41, quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (alteration in original).

Viewing the record in its entirety, a preponderance of the evidence supported the circuit court’s determination that termination of respondent’s parental rights was in the children’s best interests, MCL 712A.19b(5). *In re Moss*, 301 Mich App at 90; *In re Olive/Metts Minors*, 297 Mich App at 42. The record indicates that the children need permanency. Only a couple of years before the recent proceedings, the young children had already been outside of respondent’s care under the court’s temporary jurisdiction for a significant part of their lives without permanency. LC, almost six years old by the time of the termination proceedings, was previously outside of respondent’s care for over two years, during which she was placed in three homes, and SC, just over three years old, was in foster care for the first six months of her life. They returned to respondent’s care and custody after he rectified his issues and gained stability, only to be removed again and placed back into foster care a couple of years later after he began using drugs, lost his housing, and could not take care of them. It remained highly uncertain, given his history of failing to maintain long-term stability in a safe and suitable home for the children, even after services, that respondent would be able to do so this time, and, as the foster care worker testified, the children need permanency.

Although the court acknowledged that respondent cares, loves the children, and stepped forward and was successful with services in the past, the court also found, and evidence supported the conclusion, that the children are very young, they cannot continue to move back and forth, the lack of permanency and the instability had been going on for “too long” given their young ages, and the children are entitled to a safe, stable, and permanent home. The foster care worker testified that the children do “exceptionally well” in their current foster home, where they were also placed during the prior proceedings, and the foster parents were willing to adopt the children and provide them with a permanent home. No relatives came forward who could provide an appropriate placement for the children. Termination of respondent’s parental rights, thus, would allow the children to achieve the permanency, safety, and stability they need, and are entitled, through adoption, which is important considering their young ages and lengthy history of being temporary court wards without permanency. On this record, there was no clear error in the circuit court’s determination that that a preponderance of the evidence established that

termination of respondent's parental rights is in best interests of the children. *In re Moss*, 301 Mich App at 90; *In re Olive/Metts Minors*, 297 Mich App at 40-41; MCR 3.977(K).

Affirmed.

/s/ David H. Sawyer

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray